

PUBLIC SESSION MINUTES
North Carolina State Board of CPA Examiners
February 20, 2012
1101 Oberlin Road
Raleigh, NC 27605

MEMBERS ATTENDING: Wm. Hunter Cook, CPA, Vice President; Maria M. Lynch, Esq., Secretary-Treasurer; Barton W. Baldwin, CPA (via telephone); Bucky Glover, CPA (via telephone); Jordan C. Harris, Jr.; and Michael C. Jordan, CPA.

STAFF ATTENDING: Robert N. Brooks, Executive Director; J. Michael Barham, CPA, Deputy Director; Frank Trainor, Esq., Staff Attorney; Lisa R. Hearne, Manager-Communications; Ann J. Hinkle, Manager-Professional Standards; Buck Winslow, Manager-Licensing; and Noel L. Allen, Legal Counsel.

GUESTS: James T. Ahler, CEO, NCACPA; Linda Poulson; CPA, NCACPA; and Curt Lee, Legislative Liaison, NCSA.

CALL TO ORDER: Vice President Cook called the meeting to order at 10:07 a.m.

MINUTES: The minutes of the January 2012, meeting were approved as submitted.

FINANCIAL AND BUDGETARY ITEMS: The January 2012 financial statements were accepted as submitted.

REPORT OF THE PROFESSIONAL STANDARDS COMMITTEE: Mr. Cook moved and the Board approved the following recommendations of the Committee:

Case No. C2011236 - Warren R. Cramton - Approve the signed Consent Order (Appendix I).

Case No. C2011187 and Case No. C201196 - Close the cases without prejudice. Mr. Baldwin did not participate in the discussion of this matter nor did he vote on this matter.

Case No. C2011228 - Close the case without prejudice.

Case No. C2011211 - Close the case without prejudice and with a Letter of Warning.

Case No. C2011277 - Close the case without prejudice and with a Letter of Warning. Mr. Cook did not participate in the discussion of this matter nor did he vote on this matter.

Case No. C2011074 - Close the case without prejudice and with a Letter of Warning.

Case No. 200509-050, Case No. 200509-056, and Case No. 200303-006 - KPMG, LLP - Approve the signed Consent Order (Appendix II). Mr. Rodriguez did not, at any time,

participate in the discussion of this matter. He did not attend the meeting and therefore did not vote on this matter.

Messrs. Cook and Jordan moved to approve a non-binding interpretive statement on the publication of Board actions and decisions. Motion passed.

REPORT OF THE PROFESSIONAL EDUCATION AND APPLICATIONS COMMITTEE: Ms. Lynch moved and the Board approved the following recommendations of the Committee:

Transfer of Grades Applications - The following were approved:

Stephanie Marie Aldecoa
Jessica Shirley Doss
Lauren Topham Gulak
Nicole Leanne Palazzo

Lashanda Monique Robinson
Elizabeth Brooks Wicker
Gergana Valerieva Yaneva
Ivan Zharykau

Original Certificate Applications - The following were approved:

Stephanie Marie Aldecoa
Sheila Kaye Ammons
Jared Jay Arrowood
Carrie Ann Baker
Scott Richard Bates
William Calvin Baucom
Lora Ann Blackburn
Jason Hugh Bowman
Justin Gary Boyd
Ashley Fry Byrd
Alexander Toshiro Capo
Katrina Phyllis Carrington
Kristia Lex Andree Palma Cedeno
Suní Yemiko Clinton
James Alexander Colee
Ashley Gwaltney Covington
Jennifer Marie Craig
Amanda Carol Davis
Jessica Shirley Doss
Charles Eugene Driggers
Anna Theresa Dunbar
Shannon Lucile Dunn
Jeffrey Steven DuPre
Ryan Matthew Dupree

Sarah Washburn Eggers
Jonathan David Elson
Heather Walker Emery
Leah Savanna Farris
Keith Andrew Fisher
Rachel Roslynne Filip
Lloyd Thomas Funderburk III
Crystal Leigh Gibson
Elizabeth Miller Grant
Lauren Topham Gulak
Rebecca Anne Hampton
Kristen Nicole Hand
Andrew Edmund Hoffman
LaToya Reshée Horton
Jennifer Anne Huish
Virginia Lee Jones
Biplab Khatri
Jeffrey John Larotonda
James Michael Lawson
Steven Matthew Meisterburg
Sean Ernest Mitchell
Rebecca Zawinsky Muse
Kevan Tyrrell Ohl
John Robert Ormesher

William Eric Ostertag
Candice Lee Otey
Nicole Leanne Palazzo
Nicholas Dennis Parente
Megan Elizabeth Poindexter
John Ashley Pollard
Rachel Adams Pope
Callie Frances Reeve
Lashanda Monique Robinson
Robert Lawrence Rusch Jr.
James David Scalise
Thomas Christian Schneeberger
Matthew Aaron Schroeder
Michael Alexander Shusko
Rachel Emma Slagle
Jacob Alexander Sloan
Roxanne Deveney Stiles

Victoria Allison Sutler
Teryl Amanda Teasdell
Brian Patrick Tonner
Deborah Ann Trout
Zhaoxi Wang
Mark Donovan Weadon II
Stephanie Diane Westen
Jonathan Walter White
Elizabeth Brooks Wicker
Robert Michael Williams
Gergana Valerieva Yaneva
Chung Hwan Yang
Nancy Yinan Yang
Edward Waymond Yates III
Joanna Lynn Zanetto
Ivan Zharykau

Staff reviewed and recommended approval of the original application submitted by Joseph Thomas Laskey. Mr. Laskey failed to disclose pertinent information with his exam application but provided it with his certificate application. Staff recommended approval of the application with a one-year probationary period. The Committee approved staff recommendation.

Staff reviewed and recommended approval of the original application submitted by Mai Tram Thi Vu. Ms. Vu failed to disclose pertinent information with her exam application but provided it with her certificate application. Staff recommended approval of the application with a one-year probationary period. The Committee approved staff recommendation.

Reciprocal Certificate Applications - The following were approved:

Donna Galtress Barksdale
Debbie Elizabeth Blackman
Anthony DiSantostefano
William Dixon Eglin
Maisie Lynn Leftwich

Kevin Michael Loftis
Christine Marie Martin
Virginia Baker Saslow
Roger John Sciascia
Amy V. Williams

Temporary Permits - The following temporary permits were approved by the Executive Director and ratified by the Board:

Sherry Bennett Rae T6695
Sharon Jane Howard T6696

Lisa Ann Davis T6697
Paul Joseph Kenney T6698

Lawrence Jay Slakter T6699
Francis John Schmid T6741
David Gray Walker Jr. T6742
Anthony Michael Gagliardi T6743
Matthew Douglas Beamish T6744

Tamara Lynn Langton T6745
John Frederick Perrott T6746
Philip Yancey Fernandez T6747
Jody-Ann M. Johnson T6748
Cheryl Ann Smith T6749

Reinstatements - The following were approved:

Shelly Price Alman #23984
Robert M. Bullen #32436
Yongmei Cai #31765
Kurt Gehsmann #22908
Heather Leigh Gourley #28403
Kirk A. Hall #18484
Laura Adack Huntley #33551

Cheryl Lynn Kozik #21009
Felix Clarence Miclat Jr. #20148
Deborah Hall Proffitt #13696
William James Sharrard #7527
Shelly R. Strawn #22839
Paul Robert Thomas #28816

Reissuance of New Certificate - Applications for reissuance of new certificate submitted by the following were approved.

Nell Ban #24993
Glenn Mansfield Fisher #16633

Travis Mark Fox #26223
Fredrick Martin Gipson #29859

Reissuance of New Certificate and Consent Agreement - An application for reissuance of new certificate and consent agreement submitted by Chet Milton Williams (#16908) was approved.

Firm Registrations - The following professional limited liability companies were approved by the Executive Director and ratified by the Board:

Amy C Bowden, CPA, PLLC
Michael W. Durant, CPA, PLLC
Robert W. Ellis, CPA, PLLC

Jason Robinson CPA PLLC
Charles N Russitano CPA, PLLC

Retired Status Applications - The Committee approved the request for retired status submitted by Howell William Branch (#2123) because he is completely retired and does not receive any earned compensation for current personal services in any job whatsoever.

Extension Requests - The Committee approved Normand Jacob Travis (#26980) for extension for completion of CPE until June 30, 2012.

Examinations – The Committee reviewed and approved the following staff-approved applicants to sit for the Uniform CPA Examination:

Nadia Abed-Rabo	Christopher Deitz
Albert Adams	Chad DesMarteau
Deanna Allen	Felicia Diggs
James Allred	Alicia Dunn
Aigul Amankulova	Dana Duprey
John Anthony	Catherine Eastwood
Hannah Armsby	Catherine Edwards
Lindsay Bachner	Wesley Edwards
Elena Baker	Christopher Eisenzimmer
Kathryn Bakstad	Rebecca Ellis
Julia Baldwin	Carla Elmore
Claude Banks	Holly Embt
Svetlana Barrett	James Engel
Katie Batson	Enajevwe Eruotor
Kory Bliss	Erin Farney
Andrew Bowman	Ashley Farrish
Kenneth Boyle	Aygul Fayzullina
Tony Brewer	Kendra Ferguson
Adam Briones	Regina Ferguson
Keith Broderick	Sydney Fiesel
Adrienne Brown	Laura Fisher
Mischael Buffkin	Joseph Fleming
Paul Burks	Olivia Fong
Hope Buttitta	Sina Forghani
Faith Bynum	Shari Frankel
Christopher Capone	Carleton Gallagher
Gabrielle Carr	Jie Gao
Paul Carson	Sheila Gardner
Melissa Carter	Jacob Gentry
Crystal Climer	Shamber Gentry
Jacqueline Colburn	Michael Gerica
Alonzo Cole	Cordny Gilchrist
Carrie Conder	Jessie Goodrum
Allison Coward	Yun Guo
Kevin Cresimore	Suzanne Hahn
Thomas Cunningham	Victoria Hammer
Adam Dailey	Tanikya Harmon
Donna Davidson	Yashekia Harper
Kendall Davis	Elizabeth Harris
Alicia DeAbreu	Warren Harvey

Martha Hensley
Wendy Herman
Ashley Holder
Jonathan Holder
William Holland
Brittani Howe
Han Wen Hsu
Xianlian Huang
Christina Jackson
Sarah Jackson
Jonathan Jenkins
Michelle Johnson
Arnold Jones
David Jones
Nichole Jones
Gregory Journigan
Charlotte Keppler
Jonathan Kittel
Jonathan Kuker
Holly Lemons
Mary Leonard
Marcus Lockamy
Meredith Lowry
Rachel Luckhardt
Rashena Lynch
Maria Maldonado
Timothy Manton
Jennifer Maready
Amelia Martin
Stephen Mason
Timothy Mausolf
Kevin May
Marcus McAllister
Arthur McCall
James McDermott
Thaddaeus McKinnon
Matthew McLean
Tiffany McPherson
Brandon Miller
Preston Moore
Bradley Moree
Jennifer Morgan
John Morris

Alyssa Morrow
Lisa Morrow
Elizabeth Moy
David Murphy
Jennifer Murphy
Anthony Neal
Curtis Nesbitt
Jianming Ni
Rihen Nieto Delgado
Miles Onafowora
Joshua Overman
Tayebe Pajoooh
Jagruiti Patel
Puja Patel
Stephanie Pflum
Robert Pitino
Terri Pompey
Tonya Pope
Marla Pressley
Robert Putterman
Brittany Rainville
Raghav Reddy
Aleshia Reid
Virginia Reynolds
Justin Rink
Victor Rivera Baires
David Robertson
Marileigh Robertson
Charles Rogers
Ryan Scanlan
Amy Schilling
Lucas Shook
Robert Sluik
Aaron Smith
Steven Smith
Christopher Sparks
Aaron Sparrow
Amanda Spivey
Tracey Spruill
William Squires
Jennifer Staton
Roberto Sterling
Amanda Stillinger

Joel Stocks
Jonathan Strother
Edward Summersill
Bailey Tapert
Jamila Thomas
Tomika Thomas
Kristen Thompson
Emily Thronson
Clinton Townsend
James Vollbrecht
Ashley Wagner
Adrienne Walker
Charles Walker
Shuo Wang
Yaser Warrich

Lewkytra Weddington
Zeno Weidenthaler
Zachary Weston
Maggie Whitman
Daniel Wieland
Jennifer Williams
Patrick Willis
Gregory Wintermeier
Stephen Winters
Jocelyn Woodard
Candice Woodruff
Christopher Wright
Carole Yow
David Zukerman
Rosa Zurita Vasquez

Staff recommended that the committee determine and accept the grades received for the October - November 2011 exams. Twenty-five (25) files with grade reports were haphazardly selected and reviewed by Board members. The Committee determined and accepted the grades.

Letters of Warning - Staff received a renewal from David A. Perkins (#20969) which lists 2010 CPE taken between January 1 and June 30, 2011, without an approved extension. Staff recommended a letter of warning for a first offense pursuant to 21 NCAC 08G .0406(b)(1). The Committee approved staff recommendation:

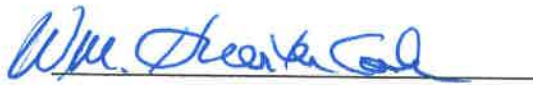
Staff received and recommended approval of the request to rescind the letter of warning awarded to Michael Anthony Spence (#34731). The Committee approved staff recommendation:

ADJOURNMENT: Messrs. Cook and Jordan moved to adjourn the meeting at 10:23 a.m. Motion passed.

Respectfully submitted:

Attested to by:


Robert N. Brooks
Executive Director


Wm. Hunter Cook, CPA
Vice President

NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA STATE BOARD OF
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS
CASE #: C2011236

IN THE MATTER OF:
Warren R. Cramton, #19615
Respondent

CONSENT ORDER

THIS CAUSE, coming before the North Carolina State Board of CPA Examiners (Board) at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to N. C. Gen. Stat. § 150B-41, the Board and Respondent stipulate to the following:

1. Warren R. Cramton (hereinafter "Respondent") is the holder of North Carolina certificate number 19615 as a Certified Public Accountant.
2. The Board received a complaint from Respondent's previous employer that Respondent had misappropriated approximately \$5,800.00 in funds from the employer within weeks of accepting a position as Controller for the employer.
3. Respondent's position with the employer was terminated, and the parties agree that Respondent replaced all misappropriated funds.
4. Respondent has not disagreed with the employer's recitation of the facts leading to his termination and complaint before this Board. However, Respondent asserts that there was no malicious intent on his part.
5. Respondent wishes to resolve this matter by consent and agrees that the Board staff and counsel may discuss this Consent Order with the Board *ex parte*, whether or not the Board accepts this Consent Order as written. Respondent understands and agrees that this Consent Order is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board Meeting.

BASED upon the foregoing, the Board makes the following Conclusions of Law:

1. Respondent is subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 08 of the North Carolina



Administrative Code (NCAC), including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.

2. Respondent's misappropriation of his employer's funds constitutes a violation of 21 NCAC 08N .0201, and .0203(a) and (b)(1).
3. Per N.C. Gen. Stat. § 93-12(9) and also by virtue of Respondent's consent to this order, Respondent is subject to the discipline set forth below.

BASED on the foregoing and in lieu of further proceedings, the Board and Respondent agree to the following Order:

1. The Certified Public Accountant certificate issued to Respondent, Warren R. Cramton, is hereby permanently revoked.
2. Respondent shall not offer or render services as a CPA or otherwise trade upon or use the CPA title in this state either through CPA mobility provisions or substantial equivalency practice privileges or in any other manner, nor shall Respondent claim or attempt to use any practice privileges in any other state based upon his permanently revoked North Carolina certificate.

CONSENTED TO THIS THE 17th DAY OF January, 2012.



Respondent

APPROVED BY THE BOARD THIS THE 20 DAY OF FEBRUARY, 2012.

NORTH CAROLINA STATE BOARD OF CERTIFIED
PUBLIC ACCOUNTANT EXAMINERS



BY: 

Vice President



NORTH CAROLINA
WAKE COUNTY

BEFORE THE NORTH CAROLINA STATE BOARD OF
CERTIFIED PUBLIC ACCOUNTANT EXAMINERS
CASE #: 200509-050, 200509-056, 200303-006

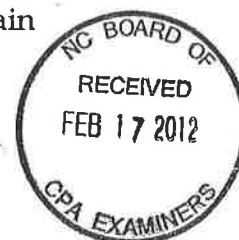
IN THE MATTER OF:
KPMG LLP
Respondent Firm

CONSENT ORDER

THIS CAUSE, coming before the North Carolina State Board of CPA Examiners (Board) at its offices at 1101 Oberlin Road, Raleigh, Wake County, North Carolina, with a quorum present. Pursuant to N.C. Gen. Stat. § 150B-41, the Board and Respondent stipulate to the following FINDINGS OF FACT:

1. Respondent KPMG LLP (hereinafter "Respondent Firm") is a registered CPA firm in North Carolina.
2. For the period of about 1996 through 2002, Respondent Firm developed, implemented, and marketed certain tax shelters including Foreign Leveraged Investment Program ("FLIP"), Bond Linked Issue Premium Structure ("BLIPS"), Offshore Portfolio Investment Strategy ("OPIS"), and Short Option Strategy ("SOS"), as well as other variants on those programs (hereinafter the "Tax Shelters").
3. Respondent Firm marketed its Tax Shelters to residents in the State of North Carolina and participated in the implementation of at least 39 of those Tax Shelters on behalf of its North Carolina clients.
4. On or about August 26, 2005, Respondent Firm entered into a Deferred Prosecution Agreement ("DPA") with the United States Department of Justice regarding the Tax Shelters.
5. Subject to the terms of the DPA, Respondent Firm admitted and accepted certain facts that were set forth in a "Statement of Facts" that was appended to the DPA. That Statement of Facts is attached to this Consent Order as Exhibit A and is incorporated by reference herein.
6. In the DPA, Respondent Firm admitted that "through the conduct of certain KPMG tax leaders, partners, and employees, during the period from 1996 through 2002, KPMG:

Assisted high net worth United States citizens to evade United States individual income taxes on billions of dollars in capital gain



and ordinary income by developing, promoting and implementing unregistered and fraudulent tax shelters. A number of KPMG tax partners engaged in conduct that was unlawful and fraudulent, including: (i) preparing false and fraudulent tax returns for shelter clients; (ii) drafting false and fraudulent proposed factual recitations and representations as part of the documentation underlying the shelters; (iii) issuing opinions that contained those false and fraudulent statements and that purported to rely upon those representations, although the KPMG tax partners and the high net worth individual clients knew they were not true; (iv) actively taking steps to conceal from the IRS these shelters and the true facts regarding them; and (v) impeding the IRS by knowingly failing to locate and produce all documents called for by IRS summonses and misrepresenting to the IRS the nature and extent of KPMG's role with respect to certain tax shelters."

7. In the DPA, Respondent Firm agreed to permanent restrictions on its tax practice, including ceasing its private tax client practice and its compensation and benefits tax practice (exclusive of technical expertise maintained within Respondent Firm's Washington National Tax Practice).
8. In conjunction with the DPA, Respondent Firm and the IRS entered into a closing agreement in which Respondent Firm agreed that the IRS would monitor the Firm's compliance with certain restrictions in the DPA for a period of two years, and in which Respondent Firm agreed to pay a \$100,000,000.00 penalty, as described in the DPA.
9. Respondent Firm has entered into settlements and/or consent orders with occupational licensing agencies across the country including, but not limited to: Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Florida, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and the District of Columbia.
10. Respondent Firm requests the Board to take into account the following mitigating factors:
 - a. Respondent Firm has never had its firm registration suspended or revoked by the Board.
 - b. Respondent Firm has at all times been cooperative with the Board in this matter.

- c. Respondent Firm has given Petitioner information about its compliance with the DPA and about the remedial actions taken by Respondent Firm, both before and after Respondent Firm entered into the DPA, to enhance quality control across Respondent Firm. Among other things, as described in the Statement of Facts, Respondent Firm took action intended to insure that all of the partners and employees responsible for the wrongful conduct have been separated from Respondent Firm or otherwise are no longer at the firm.
11. Respondent Firm wishes to resolve this matter by consent and agrees that the Board staff and counsel may discuss this Consent Order with the Board ex parte, whether or not the Board accepts this Consent Order as written. Respondent Firm understands and agrees that this Consent Order is subject to review and approval by the Board and is not effective until approved by the Board at a duly constituted Board Meeting.
12. This Consent Order fully resolves, as to Respondent Firm, the Board's inquiry into the Tax Shelters in which Respondent Firm participated from 1996 through 2002 that were the subject of the DPA and the related settlement with the Internal Revenue Service. Respondent Firm acknowledges and understands that this settlement does not bind any other agency, division, department, or political subdivision of the State of North Carolina relative to any factual allegation cited herein.
13. The Board expressly reserves its right to initiate or continue investigations and administrative proceedings against individual certified public accountants regarding the subject matter of this Consent Order.

Based upon the foregoing findings, the Board makes the following CONCLUSIONS OF LAW:

1. Respondent Firm is subject to the provisions of Chapter 93 of the North Carolina General Statutes and Title 21, Chapter 08 of the North Carolina Administrative Code, including the Rules of Professional Ethics and Conduct promulgated and adopted therein by the Board.



2. The actions of Respondent Firm's former partners and employees that were admitted in the DPA, as incorporated into this Consent Order, constitute violations of 21 NCAC 08N .0201, .0202(a), .0203(a), .0203(b)(1), .0207, .0211, .0301(b), and .0303(a). Respondent Firm is responsible for those actions and is subject to discipline pursuant to 21 NCAC 08N .0103.
3. Respondent Firm, by entering into a closing agreement with the IRS and by entering into consent agreements with other state occupational licensing agencies, is subject to discipline pursuant to 21 NCAC 08N .0204(a).

BASED on the foregoing, and in lieu of further proceedings, the Board and Respondent Firm agree to the following Order:

1. Respondent Firm is hereby censured.
2. Subject to prevailing law and professional standards regarding confidentiality, Respondent Firm voluntarily agrees to continue to fully cooperate with Board inquiries, including providing documents or other information in a timely manner to the Board without the necessity of a subpoena. Respondent Firm shall, upon reasonable notice, provide the Board: access to its current partners and employees; declarations; affidavits; or other information reasonably necessary to pursue investigations or proceedings against other persons holding a certificate as a certified public accountant in this State regarding the subject matter of this Consent Order. However, it is agreed that nothing in this Consent Order requires Respondent Firm to waive the attorney-client privilege or work product protection, or any other privilege which belongs to Respondent Firm.
3. Respondent Firm agrees to implement in this State the same permanent restrictions on its tax practice in this State that were contained in paragraph 6 of the DPA:
 - a. As stated in Paragraph 6(a) of the DPA, Respondent Firm will not engage in private client tax practice.
 - b. As stated in Paragraph 6(b) of the DPA, Respondent Firm will not engage in a compensation and benefits tax practice (exclusive of technical expertise maintained within Respondent Firm's Washington National Tax practice).
 - c. As stated in Paragraph 6(c) of the DPA, Respondent Firm will not develop or assist in developing, market or assist in

- marketing, sell or assist in selling, or implement or assist in implementing, any pre-packaged tax product.
- d. As stated in Paragraph 6(d) of the DPA, Respondent Firm will not participate in marketing, implementing, or issuing any "covered opinion" with respect to any "listed transaction" as those terms are defined by the DPA.
 - e. As stated in Paragraph 6(e) of the DPA, Respondent Firm "will not provide any tax services under any conditions of confidentiality (as defined in 26 C.F.R. § 1.6011-4(b)(3)(ii))."
 - f. As stated in Paragraph 6(f) of the DPA, Respondent Firm will not charge or accept fees subject to contractual protection or any fees that are not based exclusively on the number of hours worked at set hourly rates, which rates may not exceed twice Respondent Firm's standard rates, provided that (i) Respondent Firm may charge or accept fees described in 31 C.F.R. § 10.27(b) in the case of reverse sales and use tax audits; (ii) Respondent Firm may enter into arrangements to limit the total fees in any matter to a maximum amount or to limit fees to a specified amount per return, in each case where the fees to be charged under such arrangement would not exceed the amount that would be charged if the fees were instead based on the number of hours worked at hourly rates not more than twice Respondent Firm's standard rates; and (iii) this subparagraph does not apply with respect to engagements involving a claim for refund or application for other tax incentives where the claim or application has been filed prior to the date of this Consent Order.
 - g. As stated in Paragraph 6(g) of the DPA, Respondent Firm will comply with the ethics and independence rules concerning independence, tax services, and contingent fees as adopted by the Public Company Accounting Oversight Board as those rules are amended from time to time.
 - h. As stated in Paragraph 6(h) of the DPA, except as provided in subparagraph (k) of the DPA, Respondent Firm will not prepare tax returns, or provide tax advice of any kind to any individual clients except that it will be permitted to provide: (i) individual tax planning and compliance services to individuals who are owners or senior executives of privately held business clients; (ii) individual tax services as part of its international executive services practice, which provides advice regarding the tax



obligations of personnel of public company or private entity clients of Respondent Firm who are stationed outside of their home country; and (iii) bank trust outsourcing services where Respondent Firm prepares trust tax returns for trust departments of large financial institutions.

- i. As stated in Paragraph 6(i) of the DPA, Respondent Firm will comply with minimum opinion thresholds and return position thresholds set forth in the table contained in paragraph 6(i) of the DPA.
 - j. As stated in Paragraph 6(j) of the DPA, Respondent Firm will not rely on an opinion issued by other professional firms to determine whether it complies with the standards set forth in the foregoing subparagraph unless KPMG concurs with the conclusions of such opinion.
 - k. As stated in Paragraph 6(k) of the DPA, with respect to Respondent Firm's federal, state, and local tax controversy representation, (i) Respondent Firm will not represent persons or entities other than public companies, private entities, or persons for whom Respondent Firm is permitted to prepare tax returns under subparagraph (h); (ii) Respondent Firm will not defend any transaction that is or becomes a "listed transaction" as defined by the DPA; and (iii) Respondent Firm will not defend any transaction with respect to which the firm could not render an opinion or prepare a return in compliance with the standards set forth in subparagraph (i).
 - l. Respondent Firm may only re-engage in the activity prohibited in the section either by successfully petitioning for a modification of discipline pursuant to 21 NCAC 08I.0104 as it exists at the time of the petition, or by receiving an approved modification to the DPA and providing written notice to the Board of the modification.
4. Respondent Firm will pay the administrative costs associated with this matter in the amount of eleven thousand nine hundred sixty seven dollars (\$11,967.00). Those costs shall be paid at the same time that Respondent signs and returns this Consent Order, subject to subsequent approval of the Consent Order.
5. Respondent Firm shall remit a civil penalty in the amount of eighty eight thousand dollars (\$88,000.00). The civil monetary penalty shall be paid at the

same time that Respondent Firm signs and returns this Consent Order,
subject to subsequent approval of the Consent Order.

CONSENTED TO THIS THE 14TH DAY OF FEBRUARY, 2012.


KPMG LLP

By RICHARD BRESLOW

Its: ASSOCIATE GENERAL COUNSEL

APPROVED BY THE BOARD THIS THE 20 DAY OF FEBRUARY,
2012.

NORTH CAROLINA STATE BOARD OF CERTIFIED
PUBLIC ACCOUNTANT EXAMINERS



BY: 
Vice-President



EXHIBIT A

Statement of Facts

1. KPMG LLP ("KPMG") is a Delaware limited liability partnership and is one of the "Big Four" public accounting firms.
2. From 1996 until 2002, KPMG, through its tax partners, assisted high net worth United States citizens to evade United States individual income taxes on billions of dollars in capital gain and ordinary income by developing, promoting and implementing unregistered and fraudulent tax shelters. A number of KPMG tax partners engaged in conduct that was unlawful and fraudulent, including: (i) preparing false and fraudulent tax returns for shelter clients; (ii) drafting false and fraudulent proposed factual recitations and representations as part of the documentation underlying the shelters; (iii) issuing opinions that contained those false and fraudulent statements and that purported to rely upon those representations, although the KPMG tax partners and the high net worth individual clients knew they were not true; (iv) actively taking steps to conceal from the IRS these shelters and the true facts regarding them; and (v) impeding the IRS by knowingly failing to locate and produce all documents called for by IRS summonses and misrepresenting to the IRS the nature and extent of KPMG's role with respect to certain tax shelters.
3. This course of conduct was deliberately approved and perpetrated at the highest levels of KPMG's tax management, and involved dozens of KPMG partners and other personnel. Certain individuals involved were later promoted to firm-wide leadership positions. Moreover, during the period 1996 through 2002, KPMG changed its policies and practices in a manner that encouraged the sale of tax "products" to multiple clients. In this regard, KPMG changed its compensation structure in a manner that encouraged the sale of tax products, set policies and goals that demanded the creation and sale of tax products, and created within its tax department groups of partners and other personnel who were specifically charged with developing and selling tax shelters.
4. Throughout the period in question, the firm's internal control systems failed to prevent the improper and illegal conduct because of inherent weaknesses in the system of internal controls and because those controls that were in place were overridden by certain individuals in tax management. KPMG has implemented changes and enhancements to its internal control systems and will implement additional enhancements pursuant to the Deferred Prosecution Agreement with the Government, to ensure that such failures cannot recur. Further, KPMG has taken a number of personnel actions intended to ensure that all of the partners and employees responsible for the illegal conduct described herein have been separated from the firm. KPMG intends not only to ensure that none of its partners will in the future participate with its clients and others in fraud, but indeed, KPMG wants in the future to ensure that the highest standards of ethics and compliance with United States tax laws will be met by the firm, its leadership, partners,

personnel and clients.

The Fraudulent Tax Shelter Activities

5. KPMG tax partners helped design or sell the following tax shelters (and variations of them) to high net worth United States citizens during the period in question: Foreign Leveraged Investment Program ("FLIP"); Offshore Portfolio Investment Strategy ("OPIS"); Bond Linked Issue Premium Structure ("BLIPS"); and Short Option Strategy ("SOS").
6. FLIP was marketed and sold by KPMG between 1996 and 1999 to at least 80 high net worth individual clients and generated at least \$1.9 billion in bogus tax losses; KPMG's gross fees from FLIP transactions were at least \$17 million. OPIS was marketed and sold by KPMG between 1998 and 2000 to at least 170 high net worth individual clients, and generated at least \$2.3 billion in bogus tax losses; KPMG's gross fees from OPIS transactions were at least \$28 million. BLIPS was marketed and sold by KPMG between 1999 and 2000 to at least 186 high net worth individual clients, and generated at least \$5.1 billion in bogus tax losses; KPMG's gross fees from BLIPS transactions were at least \$53 million. SOS was marketed and sold by KPMG tax partners between 1998 and 2002 to at least 165 high net worth individual clients, and generated at least \$1.9 billion in bogus tax losses; KPMG's estimated gross fees from SOS transactions were at least \$17 million. In addition, at least 14 KPMG partners engaged in SOS transactions for their own account.
7. KPMG tax partners typically marketed the shelters to financially sophisticated, high net worth individuals who had at least \$20 million in taxable gain, and who therefore would be interested in a shelter that would generate bogus losses that could be used to offset that gain, usually in the same tax year. For each of these tax shelters, the high net worth individual client selected the amount of the loss he or she wanted to generate, and the KPMG tax partners and the other promoters would then calibrate the size of all aspects of the transaction to generate that loss. KPMG and the other promoters and participants charged the high net worth individual clients a percentage of the selected tax loss, usually between 5 and 7%, to implement the transaction, an amount that included the fees of the promoters and other participants, as well as a small portion that would be used to execute the purported "investment" transactions. KPMG's share was usually 1 to 1.25% of the tax loss. KPMG's practice of charging a percentage of the purported tax losses mirrored the practice of competing tax shelter promoters, including other major accounting and law firms that developed and sold similar shelters.
8. FLIP and OPIS were designed by KPMG tax partners, a New York lawyer who at the time was a partner in a prominent national law firm (the "New York Lawyer"), other individuals, and two KPMG tax professionals who left KPMG in 1997 to form a purported "investment advisory" firm located

in San Francisco, which in truth and in fact was in the business of promoting tax shelters (the "purported investment advisory firm"). FLIP, OPIS, and variations sold by another major accounting firm were substantially similar. These shelters were intended to generate substantial capital losses through the use of a pre-arranged series of purchases of and options on stock of one of two prominent international banks followed by redemptions of those investments by the bank.

9. The FLIP and OPIS opinions signed by KPMG tax partners, and the representations drafted by KPMG tax partners and knowingly adopted by the high net worth individual clients, falsely stated that: (a) the client requested KPMG's opinion "regarding the U.S. federal income tax consequences of certain investment portfolio transactions," when in truth and in fact these were tax shelter transactions designed to generate bogus tax losses; (b) the "investment strategy" was based on the expectation that a leveraged position in the foreign bank securities would provide the "investor" with the opportunity for capital appreciation, when in truth and in fact the strategy was based on the expected bogus tax benefits to be generated; and (c) certain money was paid as part of an investment (i.e., for a warrant or a swap), when in truth and in fact the money constituted fees due to promoters and other facilitators of the transaction. All of these opinion letters were substantially identical, save for the names of the clients and entities involved, the dates, and the dollar amounts involved in the transactions.
10. Senior KPMG tax professionals criticized the viability of these transactions and specifically questioned whether the transaction had economic substance or risk and whether the non-resident alien, whose participation as an equity holder of the foreign corporation was critical to the expected tax treatment of the redemption, would be respected by the IRS as a true equity holder or would instead be treated as a service provider or debt holder being paid a fee to accommodate the "investor."
11. KPMG tax partners were instructed not to permit potential OPIS "investors" to retain a copy of KPMG's PowerPoint presentation describing the transaction because to do so would "DESTROY any chance the client may have to avoid the step transaction doctrine." In some cases KPMG tax partners took steps described below in paragraph 25 to assist high net worth individual clients to report the transactions in a fraudulent manner with the intent to evade federal income taxes.
12. BLIPS was designed by KPMG tax partners, the purported investment advisory firm, the New York Lawyer, and others. The BLIPS transaction was intended to generate a substantial ordinary or capital loss through the use of a loan issued at an above-market interest rate and with a substantial "loan premium" which was not in fact a true loan. KPMG tax partners and the purported investment advisory firm enlisted three prominent international banks — including one bank that also participated in FLIP,

OPIS, and SOS — to provide the purported “loans” used by the high net worth individual clients who participated in this shelter.

13. The BLIPS tax opinions signed by the KPMG tax partners purported to rely upon certain factual representations made by the high net worth individual clients. These representations, which were devised by KPMG tax partners and others involved in designing BLIPS and were knowingly adopted by the high net worth individual clients, were false and misleading. The New York Lawyer issued substantially identical opinions reaching the same conclusion and purporting to rely upon the same false representations.
14. Among the false representations in the BLIPS opinion letter was the representation that the high net worth individual client as well as the purported investment advisory firm “believed there was a reasonable opportunity to earn a reasonable pre-tax profit from the [BLIPS] transactions,” when there was no such opportunity. As the KPMG tax partners and the high net worth individual clients well knew, there was no “reasonable likelihood of earning a reasonable pre-tax profit” from BLIPS, and instead the “investment” component of BLIPS was negligible, unrelated to the large “loans” that were the key elements of the purported tax benefits of BLIPS, and was simply window dressing for the BLIPS tax shelter.
15. The opinion letters and other documents implementing BLIPS also contained the false and fraudulent representation (among others) that the BLIPS “investment” was “highly leveraged.” In truth and in fact, and as the KPMG tax partners and the high net worth individual clients well knew, there was no “leverage” in the BLIPS transaction — the negligible “investment” component was carried out and secured using only cash contributed by the high net worth individual client.
16. Another false representation contained in the opinion letters was that the duration of the individual’s participation in the three-phase, seven-year investment program was dependent upon the performance of the program relative to alternative investments. The KPMG tax partners and the high net worth individual clients well knew throughout the development and implementation of BLIPS, and at the time the high net worth individual clients made this representation and the KPMG opinions were issued, that this representation was false and fraudulent. The principal purpose of the BLIPS transaction was to generate a tax loss to offset substantial income or gains, and in order to generate this purported tax benefit, the individuals had to and would withdraw from the BLIPS program by year end. Therefore, the KPMG tax partners and the high net worth individual clients knew and expected that the transactions would terminate by year end and indeed in approximately 60 days, the earliest time at which the high net worth individual client could trigger the promised tax loss, not at some investment-related point in any purported “seven-year” program. Throughout 1999, and as expected by the BLIPS participants, each of the high net worth individual clients who engaged in a BLIPS transaction

exited the transaction before year end (i.e., upon completion of the first 60 day "phase"). None of those individuals remained for three phases or seven years, and none earned a direct profit on their investment.

17. The "investment program" created by the purported investment advisory firm for the BLIPS transactions was described as a program of investments in foreign currencies intended to take advantage of volatility in foreign currencies through investments in foreign currency contracts, options and foreign currency denominated debt securities. However, when the high net worth individual clients who engaged in BLIPS transactions exited the transaction, the purported investment advisory firm typically acquired publicly traded equity securities to distribute to those clients, and to which the bogus tax basis generated through BLIPS would be "attached." In at least one case, a KPMG tax partner worked with the purported investment advisory firm and a high net worth individual client to identify publicly traded stocks that had already suffered large losses during the calendar year and used those stocks for "attaching" the bogus tax basis, for the purpose of creating the impression that the tax losses arose from the poor performance of the stocks and not from the BLIPS tax shelter.
18. Notwithstanding serious and valid concerns expressed by certain KPMG tax partners and other professionals throughout the development of BLIPS about the honesty of the proposed opinion letter and the credibility of the proposed factual representations (as well as other defects in the tax analysis contained in the opinions), Washington National Tax ("WNT"), the Department of Professional Practice - Tax ("DPP-Tax"), and other members of tax leadership approved BLIPS.
19. In March 2000, KPMG's tax leadership was advised by two of KPMG's top technical tax experts that BLIPS was "frivolous" and would "lose" in court, and was advised by professional and legal compliance personnel of the risks associated with tax shelter transactions like BLIPS, including the risk of criminal investigation, civil liability and penalties, action by the IRS's Director of Practice, and action by State Boards of Accountancy. Nevertheless, and despite the obvious facts about BLIPS² and the warnings conveyed during that time frame, KPMG's tax leadership decided to authorize the issuance of favorable opinions on all of the 1999 transactions, and proceeded with the implementation of another series of BLIPS transactions in 2000.
20. SOS and variations on that shelter were designed to generate a substantial ordinary or capital loss through the creation of an artificially high basis in an interest in a partnership or other entity through a series of purchases and sales of offsetting options on foreign currency. KPMG's top technical experts concluded that the losses claimed from SOS transactions were *not* more likely than not to be upheld in court if challenged by the IRS. Nonetheless, KPMG's tax leadership permitted its tax professionals to market and implement the transactions, all of which were substantially

similar, and to prepare tax returns incorporating these bogus tax losses.

21. One KPMG tax partner from the Stratecon group (the "Stratecon Partner") even issued KPMG tax opinions stating that the bogus tax losses generated by the SOS tax shelter transactions were more likely than not to withstand challenge by the IRS, notwithstanding the conclusion of KPMG's top technical experts to the contrary. These opinion letters, and other associated documents, were false and fraudulent in many ways, including the following: they misrepresented SOS as an investment, when in truth and in fact, as the Stratecon Partner and the high net worth individual clients well knew, it was a tax shelter designed to generate tax losses; they falsely claimed that the "investor" would have entered into the option positions independent of the other steps that made up SOS, when in truth and in fact, as the Stratecon Partner and the high net worth individual clients well knew, the "investors" would not; and they falsely claimed that the option positions were contributed to a partnership to "diversify" the client's "investment" when in truth and in fact, as the Stratecon Partner and the high net worth individual clients well knew, the contribution was simply a necessary step in the tax shelter and was executed for the purpose of generating the tax loss. Although the Stratecon Partner took several steps to conceal his activity from both the IRS and some members of KPMG leadership, several senior tax partners knew of this activity. Ultimately, KPMG's Office of General Counsel determined that the Stratecon Partner had violated firm policies and recommended that the firm terminate him, but that recommendation was rejected in late 2002 by the former Deputy Chairman and tax leadership.
22. In addition to the SOS transactions implemented by the Stratecon Partner, a number of other KPMG tax partners assisted high net worth individual clients with SOS transactions for a fee generally equal to 1% of the tax losses to be generated. In these transactions, KPMG did not issue an opinion as to the legitimacy of claiming the losses purportedly generated by the shelter but those transactions were supported by opinions issued by other firms. When a senior KPMG tax partner at WNT reviewed a draft SOS opinion letter to be issued by the New York Lawyer to several high net worth individual clients of KPMG, the tax partner suggested that the representations upon which the draft opinion letter was based were not credible and questioned whether the high net worth individual client would be able to swear under oath in a court of law that the representations were true. Nonetheless, another KPMG tax partner continued to assist in the implementation of this SOS transaction and prepared and signed the tax returns of these clients incorporating the bogus tax losses, as did other KPMG tax partners in other SOS transactions.

Steps Taken to Avoid IRS Scrutiny of the Tax Shelters

23. KPMG tax partners actively took steps to conceal these shelters from the IRS. These actions included: (i) deciding not to register the tax shelters

with the IRS, as required by law; (ii) preparing tax returns for some high net worth individual clients that fraudulently attempted to make it less likely that the individuals would be audited or, if audited, less likely that the IRS would learn through the audit of the clients' participation in the tax shelter; and (iii) improperly seeking to conceal the transactions under the veil of sham attorney-client privilege claims.

24. As part of their efforts to conceal the tax shelters from the IRS, KPMG tax leaders decided not to register those tax shelters as KPMG was required by law to do. Specifically, the decisions not to register the tax shelters were made in the face of advice from its professional and legal compliance personnel that the shelters should have been registered. On at least one occasion, those professional and legal compliance personnel warned that a willful failure to register the shelters could be criminal conduct.
25. KPMG tax professionals prepared tax returns for some high net worth individual clients that fraudulently attempted to conceal the shelters from IRS scrutiny. Specifically, some KPMG tax partners worked with high net worth individual clients to use a grantor trust and net the short-term capital losses generated by these tax shelters with the long-term capital gains that the shelters were designed to offset. By this improper and fraudulent conduct, the high net worth individual clients reported on their tax returns only a small net gain or loss created by subtracting the large bogus shelter loss from the large long-term capital gain rather than reporting both large figures on their individual income tax returns. The purpose of making use of this "grantor-trust netting" was to conceal the bogus tax shelter losses from the IRS and thus reduce the risk of an audit of the high net worth individual clients, thereby reducing as well the risk that the IRS would scrutinize the shelters. Despite stark warnings by the partner-in-charge of the personal financial planning group within WNT that to engage in "grantor trust netting" might be criminal, a leader of the PFP group decided that each individual KPMG tax partner should decide for himself or herself whether he or she felt comfortable advising high net worth individual clients to engage in "grantor trust netting" or to participate in this practice.
26. The Stratecon Partner took additional fraudulent steps to conceal shelter transactions from the IRS by purporting to have the high net worth individual clients engage a law firm to provide legal advice, which law firm would then purport to engage KPMG to work under the direction of the law firm. Although under *United States v. Kovel*, communications by non-lawyer professionals such as accountants are protected under the attorney-client privilege when the accountant is in fact working under the direction of an attorney, numerous *Kovel* arrangements established by this former partner were sham arrangements because the individuals did not directly engage the law firm, in many instances never even spoke to the lawyers whom they had purportedly engaged, and the Stratecon Partner's work was done outside of the purported lawyer-client privilege. The purpose of this improper conduct was to enable the high net worth individual client, with

the assistance of the Stratecon Partner, to conceal the fraudulent tax shelter from the IRS by attempting to cloak all of the work for the shelter in the attorney-client privilege. The Stratecon Partner's conduct was well known to his supervisors who were later promoted to the positions of Vice Chairman in charge of Tax and Chief Financial Officer. This abuse of the attorney-client privilege was used by the Stratecon Partner (with the knowledge and approval of his supervisors) to circumvent the firm's internal controls, and to prevent others at KPMG from having full access to documents relating to the Stratecon Partner's fraudulent activities.

27. Some KPMG tax partners and tax leaders also routinely attempted to cloak in the attorney-client privilege communications that revealed the true nature of their conduct even though those communications were not privileged — i.e., they were not conveying confidential information to attorneys for the purpose of receiving legal advice — by routinely copying an Associate General Counsel on email communications and memoranda in an effort to conceal information contained in those communications and memoranda from the IRS and others.

***KPMG's Responses to IRS and Senate Investigations
of its Fraudulent Tax Shelter Activities***

28. Despite the efforts described above by the tax partners to prevent IRS scrutiny of these tax shelters, the IRS became aware of certain of these tax shelters and in September 2001 it initiated an examination of KPMG for its failure to register the transactions with the IRS. As part of this examination, in early 2002 the IRS issued 25 summonses to KPMG calling for the provision of information relating to numerous tax strategies with which KPMG may have been involved. In response to these 25 summonses, KPMG provided the IRS with several hundred boxes of documents responsive to the summonses. However, hundreds of documents were withheld on claims of privilege that were later rejected by a United States District Court based on the Court's determination, which KPMG did not appeal, that KPMG had "misrepresent[ed] its unprivileged tax shelter marketing activities as privileged communications."
29. In addition, the IRS summonses required KPMG to designate a knowledgeable person to testify under oath at the IRS. KPMG's tax leadership designated the partner in charge of the PFP group (the "PFP Leader") to testify. A KPMG representative who attended the first of the PFP Leader's four days of testimony expressed the view to several KPMG tax leaders that the PFP Leader's testimony was, in many respects, misleading and evasive. This testimony was not supplemented or corrected.
30. One of the 25 summonses to which KPMG responded called for production of documents relating to transactions described in an IRS administrative notice designated as Notice 2000-44. KPMG tax partners understood that documents relating to BLIPS and SOS were called for in response to this

summons and others. KPMG produced certain documents relating to BLIPS but did not produce any documents relating to SOS. Despite the involvement of a number of its tax partners in the marketing and sale of SOS transactions, which was well known to several members of KPMG's tax leadership and certain partners responsible for responding to the summonses, no documents relating to SOS were collected as part of the initial summons response process, and on several occasions prior to early 2003, the IRS was falsely advised that KPMG had largely complied with the IRS summonses.

31. In addition, as several members of KPMG's tax leadership and certain partners responsible for responding to the summonses well knew, information and documents relating to the Stratecon Partner's activities were called for by summonses issued by the IRS to KPMG. Indeed, the Stratecon Partner had arranged for at least 14 KPMG partners to engage in SOS transactions for their own account. Nevertheless, KPMG did not produce to the IRS in response to summonses any documents or information relating to the Stratecon Partner's tax shelter activities until 2004, and on several occasions prior to early 2003, the IRS was falsely advised that KPMG had largely complied with the IRS summonses.
32. In early 2003, the IRS became aware that KPMG tax partners had helped some high net worth individual clients participate in SOS tax shelters. In May 2003, IRS agents directly asked KPMG, through its outside counsel, what role KPMG had played in the SOS shelters. A KPMG tax partner seeking information in response to that inquiry conveyed the IRS' inquiry to the PFP Leader, who falsely advised that the only role that KPMG had played with respect to SOS was to assist a couple of high net worth individual clients in preparing and filing tax returns that reflected the tax losses from SOS transactions. This false representation was then relayed to the firm's counsel, and then made to the IRS. In fact, KPMG was in possession of numerous responsive documents and the existence of those documents was known to senior tax leaders and legal compliance personnel directing the summons-response process. Yet, none of the SOS transactions marketed and sold by KPMG tax partners were provided to the IRS until late 2003 and early 2004.
33. In January 2003, the Permanent Subcommittee on Investigations of the United States Senate's Committee on Governmental Affairs (the "Subcommittee") commenced an investigation into efforts of several major accounting firms, including KPMG, to mass market abusive tax shelters. As part of that investigation, the Subcommittee issued a subpoena to KPMG calling for the production of certain documents, including information relating to tax shelters used by certain KPMG partners to avoid their own taxes. KPMG was in possession of numerous documents responsive to that request and several senior tax partners and KPMG's Office of General Counsel were well aware of those tax shelters and documents and the Subcommittee's request for them. In February 2003, KPMG stated that "to

the best of its knowledge and belief, after reasonable inquiry to date, the firm has not yet identified any documents that are responsive to this request," and the firm subsequently negotiated with the Subcommittee as to the scope of the subpoena. None of the documents relating to SOS transactions, including tax shelters used by certain KPMG partners on their own account, was produced to the Senate.

34. In November 2003, several KPMG tax partners testified in a public hearing before the Subcommittee. The PFP Leader delivered KPMG's official statement to the Subcommittee, and then falsely denied in response to one question that KPMG's fee was a percentage of the tax loss to be generated by the shelters. In addition, when asked by a Senator whether FLIP, OPIS and BLIPS were "designed and marketed primarily as tax reduction strategies," the PFP Leader falsely stated "Senator, I would not agree with that characterization." The testimony of KPMG's representatives before the Subcommittee was misleading and evasive in other ways, at one point prompting a Senator to admonish the PFP Leader to "try an honest answer" and at another point prompting a Senator to state to KPMG's Vice Chairman in charge of Tax that "I can't get a straight answer out of you to a very direct question."

KPMG's Cooperation

35. At the outset of the criminal investigation, KPMG made the decision to cooperate with the Government. To that end, KPMG, on its own initiative, determined to condition employment and payment of legal fees for its current and former partners on their cooperation in the investigation, and took disciplinary action, including by refusing to pay attorneys' fees and by terminating the employment of those who chose not to cooperate with the criminal investigation. KPMG also declined to enter into any joint defense agreements with any current or former personnel or any other organizations or individuals whose conduct has been the subject of the Government's investigation. KPMG responded to grand jury subpoenas by providing the Government with documents reflecting the improper and illegal conduct of its tax partners and others, and responded to numerous specific requests for information on particular issues. As the Government's investigation progressed, the firm periodically authorized waivers of attorney-client and work product privileges in order to provide the Government with documents containing factual information of material interest to the Government's investigation. The firm also agreed to limited requests made by the Government to refrain from conducting certain internal inquiries that might have interfered with the Government's own investigation.
36. KPMG has also agreed to fully cooperate with the Government's investigation into criminal wrongdoing associated with the development, promotion, and implementation of tax shelters.